



Legislative  
Research  
Council

# MINUTES

## Regional Watershed Advisory Task Force

---

**Fourth Meeting**  
**2013 Interim**  
**December 2, 2013**

**LCR 1 & 2**  
**State Capitol**  
**Pierre, South Dakota**

The fourth meeting of the interim Regional Watershed Advisory Task Force was called to order by Representative Brian Gosch, Chair, at 1:00 p.m. (CDT), on Monday, December 2, 2013, in LCR 1 & 2 in the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Brian Gosch (Chair), Dennis Feickert, Leslie Heinemann, and Spencer Hawley; Senators Jason Frerichs, Tom Jones, Mike Vehle (Vice Chair), and Jim White (appearing telephonically); and Mike Jaspers, Rick Sommers, and George Vandel. Members excused were: Dennis Duncan, Paul Symens, and Kim Vanneman. Staff members present included Tom Magedanz, Principal Research Analyst, David Ortbahn, Principal Research Analyst, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was recorded by South Dakota Public Broadcasting. The committee documents and archived recording are available at the LRC website at <http://legis.sd.gov> under "Interim – Agendas, Minutes and Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order.

### Minutes

**MR. MIKE JASPERS MOVED, SECONDED BY MR. GEORGE VANDEL, TO APPROVE THE MINUTES OF SEPTEMBER 15-16, 2013. The motion prevailed unanimously on a voice vote.**

### Opening Remarks

**Representative Brian Gosch**, Chair, welcomed everyone to the meeting. **Mr. Tom Magedanz**, LRC Staff, provided a brief overview of the previous meetings. He distributed the following documents: copies of the 2012 and 2013 Regional Watershed Advisory Task Force Interim Reports to the LRC Executive Board (**Documents 1 and 2**); a copy of SDCL §§ 46A-14-93 and 46A-14-94 – the enabling legislation for the task force (**Document 3**); correspondence from Mr. Paul Symens regarding his suggestions for the task force to discuss (**Document 4**); a list of legislative concepts endorsed by several agricultural groups at the July 1, 2013, meeting in Aberdeen (**Document 5**); a list of bill drafts requested at the September 25, 2012, task force meeting in Brookings (**Document 6**); and a list of proposals from the East Dakota Water Development District made at the April 22, 2013, meeting in Mitchell (**Document 7**).

## **Review of Previous Draft Requests and Proposals**

**Mr. Magedanz** reviewed requests for draft legislation that were made by the task force, as well as proposals made by other groups.

At the September 25, 2012 meeting in Brookings, the task force requested that legislation be drafted on the following five topics for action at the December meeting in Aberdeen. That meeting was cancelled because of a winter storm, and no legislation was acted upon or introduced by the task force during the 2013 legislative session. Two of the drafts were introduced by individual legislators. The five drafts were as follows:

- Clarify, update, and remove inconsistencies from the current watershed district law (SDCL Chapter 46A-14). (SB 153 – Passed.)
- Establish a uniform, statewide drainage permit application that includes a means of tracking drainage information and activity. (SB 179 – Did Not Pass.)
- Establish a method of tracking drainage and drain tiling activity and permits on a statewide basis. (Not Introduced.)
- Provide a source of technical expertise and assistance for use by local governments on drainage and watershed management issues. (Not Introduced.)
- Authorize a drainage dispute resolution process such as the use of referees or mediation to be attempted before a dispute goes to court. (Not Introduced.)

The following proposals were made by several agricultural organizations at the July 2013 meeting in Aberdeen. These were presented for discussion purposes and not all of the groups necessarily supported all of the proposals:

- Mandatory mediation of disputes.
- Standardized notice or disclosure of new drainage projects.
- Identify water management and drainage assets and resources and catalogue infrastructure improvements to create a database of projects and improvements.
- Funding for best practices research.
- Creation of regional Water Management Districts based on drainage basin boundaries.

The following proposals were made by the East Dakota Water Development District at the April 2013 meeting in Mitchell:

- Counties that opt to regulate drainage must develop and adopt a county drainage plan.

- Specify the items that must be included in the county drainage plan.
- Counties issuing drainage permits would be required to include maps of the drainage projects and consider all roads within the county, not just county roads.
- Repeal provision in existing drainage law dealing with the financial interests of the upstream and downstream landowners.
- Remove the limit on fees the county can charge for drainage permits (\$100).
- Standardized county drainage permit application form.
- Revise requirements relating to vested drainage rights.
- Remove the requirement in 46A-10A-48 that a licensed land surveyor verify the accuracy of coordinated drainage area maps.

### Public Testimony

**Mr. Mike Traxinger**, Huron, Legislative Director, South Dakota Farmers Union, provided information on two preliminary ideas relating to dispute resolution (**Document 8**). One proposal would provide for notice and opportunity to remedy a dispute before going to court, and the other would require mediation of disputes. He noted that his board had not signed off on the proposals and is not on record as favoring or opposing them. Both proposals could stand alone or operate together. In response to a question on whether we know how many water dispute cases are currently in the court system, Mr. Magedanz stated he will check with the Unified Judicial System. **Mr. Rick Sommers** stated he usually has two or three active cases in Brown, Day, and Marshall Counties. **Mr. George Vandel** noted that the proposals are positive steps in cases where disputes have arisen, but it would still be helpful to have an advance notification procedure in place to notify adjacent landowners and local governments of proposed projects and drainage activity.

**Ms. Angela Ehlers**, Presho, Executive Director, South Dakota Association of Conservation Districts, provided a brief overview of a concept that was being explored on creating regional basin councils on the major river basins in the state. The councils would have representatives from the conservation districts within the basins and would serve as regional water management entities. The councils would serve as a central registry for water assets and a place to record drainage permits as well as provide technical and financial assistance. The councils could also issue drainage permits. The councils would not eliminate or alter other government entities or special purpose districts. Ms. Ehlers does not expect any legislation on this concept in 2014. Ms. Ehlers provided talking points and maps to LRC staff following the meeting and are included in the committee documents (**Documents 9 and 10**). Mr. Vandel asked whether counties that want to continue regulating drainage and issuing drainage permits under current law could continue to do so. Ms. Ehlers stated that there would still be a problem with drainage regulation not following drainage basin boundaries; she suggested that there might be an opportunity for counties to vet their ideas with the councils.

**Representative Spencer Hawley** asked any subbasins in addition to the eleven major basins would be considered. Ms. Ehlers answered that it would be possible to some of the councils into smaller units depending on the situation.

**Mr. Brad Preheim**, Centerville, Manager, Vermillion Basin Water Development District, stated that it would be helpful to look at water management issues using a drainage basin approach but there is a need to develop more specifics on the proposal. Managing water is more than tiling and drainage, it also includes the coordination of roads, bridges, and culverts. Having a resource in place for ditching and diking associations to go for assistance may be helpful. He said there is a need for an entity to coordinate water management efforts and this cannot be done at the local level. Representative Gosch asked how water development districts would be affected by Ms. Ehlers' regional watershed council proposal. Mr. Preheim answered that his water development district would be able to work with a council system.

**Mr. Jay Gilbertson**, Brookings, Manager, East Dakota Water Management District, stated that the council concept is similar in some respects to House Bill 1001 (1998), but many details need to be worked out. If entities will be providing technical and financial assistance, they will funding and taxing authority. He also provided a more detailed explanation of the proposals he made at the April 2013 meeting in Mitchell (**Document 11**).

**Mr. Matt McCaulley**, Sioux Falls, Lobbyist, South Dakota Corn Growers Association, discussed the five proposals for discussion that the agricultural groups put forward at the meeting in Aberdeen in July (Document 5 previously distributed). He said that not all of the groups agreed with all of the proposals and that it is necessary to find areas of consensus. The mandatory mediation of disputes would resolve many issues and would be a start; it is important to get people to communicate.

### **Department of Environment and Natural Resources**

**Ms. Jeanne Goodman** and **Mr. Mark Rath**, representing the Department of Environment and Natural Resources (DENR), in response to a question by Chair Gosch, presented a brief overview of how DENR deals with surface water issues and how it affects the resource. In response to a question by **Senator Jason Frerichs** regarding Bitter Lake, its outlet elevation, and vested water rights by the Department of Game, Fish and Parks (GFP) on this and other lakes, Mr. Rath stated that GFP has filed vested water rights claims on various lakes over the years. He explained the criteria that DENR used in determining these claims. Bitter Lake is a closed basin lake which has been filling for the last twenty years. It still needs to come up 8 – 9 ft. before it will exit the natural outlet. GFP's claim is below that level. Mr. Rath and Ms. Goodman also reviewed criteria for flood control permits and irrigation permits. In response to a question by Representative Hawley on whether DENR has a hydrologist available for assistance to counties, Ms. Goodman stated the staff can answer questions but the department does not have the resources available to do county wide hydrology studies.

### **Department of Game, Fish and Parks**

At the request of Chair Gosch, **Mr. Jeff Vonk**, Secretary, Department of Game, Fish and Parks, spoke about the possibility of doing a pilot project using retention ponds with flood control gates in inundated areas adjacent to major state highways and county roads. He suggested an area on U.S. Highway 12 that flooded a couple of years ago. The idea should be explored with the assistance of the Department of Agriculture and the Department of Transportation, as a joint pilot project. Chair Gosch noted that there are potential benefits from this approach and asked whether the task force is interested pursuing this concept. Following discussion it was the consensus of the task force that they would like to further explore the idea.

### **Department of Agriculture**

At the request of Chair Gosch, **Mr. Lucas Lentsch**, Secretary, Department of Agriculture, briefed the task force on how the department uses mediation in their agricultural loan programs. He noted that mediators are under contract with the department. He noted a possible problem that their program would have in mediation of water and drainage issues because of the complexity of those disputes and the larger number of parties involved. There would be a need for technical expertise associated with mediation efforts. Secretary Lentsch also spoke about the possibility of the department partnering in a retention pond pilot project. As long as the project creates value for South Dakota's rural communities the department would be willing to explore it.

### **Task Force Discussion**

**Chair Gosch** asked for task force comments on what direction and topics they would like to work on during the upcoming session and next interim. He stated that upcoming task force meetings will be in Pierre and he foresees working in the areas of mediation, district or basin council structure, and the retention pond concept, as well as other potential concepts.

**Senator Jason Frerichs** would like to have more information on Bitter Lake and Dry Lake #2 and what can be done to reduce those lake levels. He commented that they tried to form a watershed district but did not have the public support. He also stated that mediation of disputes would be an important first step and he would like to continue to pursue efforts on regional districts.

**Senator Tom Jones** commented that he would like to see more guidelines that will assist counties and local governing boards with legal, financial, and engineering assistance. The task force needs to provide some relief to the landowners affected by Dry Lake #2.

**Mr. Jaspers** asked for the possible number of mediation cases and the costs associated with it. He would like to have more discussions on the disclosure of new projects and if and where they are recorded, as well as a clarification of vested drainage rights. He would like to know more about existing taxing districts and what would overlap with the proposed water basin council and water management districts. He noted the need for local control and for communication among neighbors, landowners, and government entities.

**Representative Leslie Heinemann** likes the idea of the mediation process. He stated that Moody County has a drainage ordinance that is working, and the process tends to improve communication between neighbors. He is also interested in the concept that Ms. Ehlers discussed as long as it does not create new entities and there is local control. He would like to have more information on the taxation aspects of these proposals. The Bitter Lake issue is extremely complex and may be beyond the scope of the task force's activities. He also noted that issues of drainage and excessive water only affect the eastern part of the state; he does not want to negatively affect other parts of the state.

**Mr. Vandel** would like to look at the five concepts proposed by the agricultural groups and set goals for the 2015 legislative session.

**Mr. Sommers** commented that if mediators are used, they need to have credentials and experience in water law. He stated that drainage ordinances can work, especially in counties like Moody County that have more conventional drainage areas. However, in counties with closed drainage basins the county commissioners are not able to address the situation. He stated that individuals are draining into closed basin lakes and the cumulative effect causes difficult problems. These situations are hard for counties to address and often end up in court.

**Representative Dennis Feickert** commented that a lot of the discussion was on the positions taken by county commissioners. Perhaps there needs to be legislation to require the counties to adopt drainage ordinances. Mediation could be helpful, but the mediation process should not discourage the counties from exercising their drainage authority.

**Chair Gosch** stated that he would appoint four subcommittees to work on the legislative concepts brought forth at this and previous meetings and then meet as a task force to discuss subcommittee recommendations. Subcommittees may include:

- Mediation.
- Water management entities, along with funding of best practices research and identification of water management assets.
- Standardized disclosure of new projects and tracking of drainage and infrastructure activity.
- Retention pond concept.

### **Adjournment**

**REPRESENTATIVE VANNEMAN MOVED, SECONDED BY MR. SOMMERS, THAT THE MEETING BE ADJOURNED. Motion prevailed on a voice vote.**

The chair adjourned the meeting at 4:25 p.m.



*All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage at <http://legis.sd.gov/>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **E-Subscribe** on the South Dakota Legislature's Homepage.*